

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

JOSE BANUELOS and TINA  
BANUELOS,

Plaintiffs,

vs.

CHANDELEUR HOMES, INC.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

NO. 1:04-CV-01134

**FILED BY**

**JUL 12 2005**

Thomas M. Gould, Clerk  
U. S. District Court  
W. D. OF TN, Jackson

**PRETRIAL ORDER**

The parties, by and through counsel, submit the following pre-trial order.

1. Jurisdictional Questions.

There are no jurisdictional issues to be resolved.

2. Pending Motions.

A. Plaintiff's Motions

B. Defendant's Motions

The defendant anticipates filing four (4) motions in limine pertaining to the exclusion of certain anticipated evidence and requests that these be heard before the beginning of trial

3. Contentions of the Parties.

A. Plaintiff's Contentions

The Plaintiffs allege that the fire was a result of a manufacturing defect in the wiring of the mobile home. It is also alleged that the defect was a breach of implied warranties of merchantability and fitness for a particular purpose. Based primarily upon the opinion of the Plaintiffs' experts, Mr. Gerald Alsup and Mr. Dan Wiener, it is the Plaintiffs' position that the fire originated in the ceiling area of the utility room over an electrical panel box. The cause of

the fire was an electrical failure in the number 12 copper conductor cable running through the attic space above the laundry room which provided a source of ignition. This was probably the result of damage caused by improper installation of a staple or other cable restraint which occurred during the manufacturing process.

B. Defendant's Contentions

The defendant denies that any type of manufacturing defect caused the fire, including the alleged improper installation of a staple or other restraint device. In fact, the defendant did not place a staple or other restraining device in the area where the plaintiffs allege the fire originated. Rather, the defendant asserts that the fire originated in the floor of the utility room of the mobile home and was caused by the ignition of gasoline that was present on this floor and placed there by an external source.

4. Stipulated Facts

A. The mobile home which is the subject of this suit was manufactured by the defendant Chandeleur Homes in March of 1996 at its factory in Boaz, AL. The home was sold to Tennessee Mobile Home Sales, a mobile home dealer in Milan, Tennessee and was purchased from the dealer by the Plaintiffs. The Plaintiffs insured the mobile home and its contents through a home owners policy with American Modern Home Insurance Company.

5. Contested Issues of Fact

A. The cause and the origin of the fire

6. Contested Issues of Law

The plaintiffs assert four causes of action in their complaint: (1) products liability claim, (2) negligence claim, (3) breach of implied warranty claim, and (4) res ipsa loquitur claim. The defendant asserts that the plaintiffs may not pursue a products liability and negligence claims

with respect to alleged damage to the mobile home itself because that claim is barred by the economic loss doctrine. In addition, the breach of implied warranty claim is not a viable cause of action because the plaintiffs and the defendant are not in privity of contract. Finally, the res ipsa claim fails because the evidence shows that the defendant has not had control of the mobile home since it was manufactured in 1996. Finally, the defendant asserts that all of the plaintiff's claims are barred by the statute of repose. TENN. CODE ANN. § 28-3-202.

7. Exhibits to be Offered at Trial

A. Plaintiffs Exhibits

1. Claim file of American Modern Home Insurance Company
2. List of Damaged Property and Expenses by Plaintiffs and American Modern Home.
3. Reports of Dan Weiner and Gerald Alsup
4. Photographs taken by Mr. Weiner, Mr. Alsup and the Huntingdon Tennessee Fire Department.

B. Defendant's Exhibits

1. Photographs of fire scene taken by Huntingdon Fire Department, Wayne Miller, Gerald Alsup, and Dan Weiner.
2. Diagram/Floor Plan of subject manufactured home.
3. Inspection Checklist of Chandeaur Homes, Inc.
4. Ignitable Liquids Analysis of Travelers Loss Prevention & Engineering Laboratory dated December 23, 2003.
5. Electrical Schematics of subject manufactured home
6. Invoices from Unified Investigation & Science, Inc.

7. Report of Wayne Miller

8. Witnesses to be Called

A. Plaintiff's Witnesses

1. Those expected to be called

- a. Jose Banuelos
- b. Tina Banuelos
- c. Dan Weiner
- d. Gerald Alsup
- e. Vicki Brown

2. Those that may be called

- a. Bobby Brewer
- b. Doug Pruitt
- c. Mike Murphy

B. Defendant's Witnesses

1. Those expected to be called

- a. Bobby Brewer
- b. Michael McClure
- c. Wayne Miller
- d. Garrett McKone
- e. Scott Roberts

2. Those that may be called

- a. Chris Honaker
- b. Eddy Mathis

- c. Marcel Baril
- d. Lenny Howes
- e. Doug Pruitt
- f. Mike Murphy

Respectfully submitted,

*Barbara J. Perutelli / w/ Todd Presnell*

Barbara J. Perutelli  
SCHULMAN, LeROY & BENNETT, P.C.  
7<sup>th</sup> Floor, 501 Union Building  
P.O. Box 190676  
Nashville, Tennessee 37219-0676

Attorneys for Plaintiffs

*E. Todd Presnell*

E. Todd Presnell  
MILLER & MARTIN PLLC  
1200 One Nashville Place  
150 Fourth Avenue North  
Nashville, Tennessee 37219-2433  
(615) 244-9270

*Todd A. Rose / w/ Todd Presnell*

Todd A. Rose  
BURCH, PORTER & JOHNSON PLLC  
107 West Blythe  
Paris, Tennessee 38242  
731/642-2555  
731/642-1070

Attorneys for Chandeaur Homes, Inc.

*Approved:  
James D. Todd  
11 July 2005*



## Notice of Distribution

This notice confirms a copy of the document docketed as number 11 in case 1:04-CV-01134 was distributed by fax, mail, or direct printing on July 12, 2005 to the parties listed.

---

Barbara J. Perutelli  
SCHULMAN LEROY & BENNETT  
501 Union Building  
Ste. 701  
Nashville, TN 37219

Brian Casper  
SCHULMAN, LEROY & BENNETT  
501 Union St.  
7th Floor  
Nashville, TN 37219--067

Paul Newmon  
99 Court Square, STE 103  
Huntingdon, TN 38344

Todd Alan Rose  
BURCH PORTER & JOHNSON  
P.O. Box 130  
107 West Blythe Street  
Paris, TN 38242

E. Todd Presnell  
MILLER & MARTIN, LLP  
150 Fourth Ave. N.  
1200 One Nashville Place  
Nashville, TN 37219--243

Honorable James Todd  
US DISTRICT COURT